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**FISCAL IMPACT STATEMENT**

**LS 6412**

**BILL NUMBER:** HB 1226

**NOTE PREPARED:** Dec 8, 2010

**BILL AMENDED:**

**SUBJECT:** Child Care Regulation.

**FIRST AUTHOR:** Rep. Lehman

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill makes various statutory changes making certain health and safety requirements applying to child care providers consistent, including criminal history checks, drug-testing, caregiver education and supervision, nutrition, immunizations, fire and hazardous materials safety, and administrative procedures for noncompliance. The bill also makes technical changes.

(The introduced version of this bill was prepared by the Committee on Child Care.)

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:** *Summary:* This bill will impact the workload of the Division of Family Resources (DFR), the Indiana State Department of Health (ISDH), the State Fire Marshal, and the Fire Prevention and Building Safety Commission to adopt new rules governing the registration and inspection of child care ministries.

Most of the additional workload created by the bill will fall on the DFR to inspect child care providers to ensure compliance and provide a remedial action process for child care providers who are found to be in noncompliance with the requirements in the bill. The Family and Social Services Agency (FSSA) reports the provisions of the bill can be implemented with currently existing staff and resources.

The bill also adds that child care providers and facility directors will have to obtain a national criminal history background check in order to provide child care. This will increase the workload of the Indiana State Police to process any additional requested background checks.

The workload of the Office of the Attorney General (OAG) may also increase to the extent (1) the DFR determines an unregistered child care ministry has been operating in the state and reports this finding to the OAG and (2) the OAG is required to represent the state in any civil or criminal action taken against child care ministries found to have been operating without a registration. [Currently, if a report is made with the DFR of an unregistered child care ministry operating in the state, the DFR has no statutory authority to investigate these reports.]

Background Information:

*Division of Family Resources (DFR):* This bill will impact the workload of the Division of Family Resources by requiring them to do the following:

- (1) adopt new rules to govern the registration and inspection of child care ministries (CCMs) [Note: DFR currently only inspects CCMs and does not consult with other state agencies to adopt rules governing CCM operation.],
- (2) ensure child care provider employees and volunteers meet regulations contained in the bill,
- (3) ensure child care provider employers are providing required training to employees and volunteers,
- (4) establish a drug-testing protocol for child care provider employees and volunteers,
- (5) establish proper safety guidelines for child care providers,
- (6) revoke, suspend, or withhold registrations of CCMs found to be in noncompliance with the regulatory provisions of the bill,
- (7) provide probationary registration procedures for CCMs that are temporarily unable to comply with certain requirements contained in the bill,
- (8) defend any decision regarding the revocation or suspension of child care provider registration that is challenged with judicial review, and
- (9) investigate reports of unregistered CCMs and report findings to the state Attorney General or the local prosecuting attorney.

The requirements above currently regulate child care centers and child care homes in the state, but not child care ministries. This bill will consistently apply the same regulations across all child care providers in the state. FSSA reports these provisions of the bill can be implemented within currently existing resources and staffing levels.

Child care providers who are found to be in violation of provisions in the bill would be ineligible to receive child care voucher reimbursement. Because child care vouchers follow eligible children, if this bill increases the number of child care providers who are ineligible to receive voucher reimbursement, child care voucher reimbursements will be displaced to other compliant child care providers. No decrease in state expenditures would be expected as a result.

According to information provided by FSSA, currently a provider cannot accept child care voucher payments until they have demonstrated compliance with the regulations concerning child care providers. If a provider is found to be in noncompliance with regulations, they receive a Notice of Order that gives the provider 18 days to correct any noncompliance cited. If the noncompliance is corrected within the 18-day period, the provider remains certified to receive Child Care Development Funds. If a provider does not correct noncompliance issues, they are decertified. Additionally, licensed providers remain eligible until the appeal process for license denial, revocation, or suspension has been completed.

When a license has been suspended or revoked, providers are currently given a 30-day notice. This allows parents time to select a new child care provider. Providers are also able to continue operation during the appeal process so parents have opportunities to locate new child care. In the case of an emergency closure when a provider must close immediately, one of two things will happen depending on the nature of the emergency; either Bureau of Child Care staff will have the provider notify each of the parents and will remain with the provider and children until every child is retrieved by their respective parent or guardian, or the provider will be required to close the next day. In extreme emergencies, local law enforcement remain with the children until a parent or guardian can retrieve them.

During FFY 2010, 31 child care facilities in the state were found to have been operating without a proper license. Currently, when Bureau of Child Care staff determine a provider is operating a child care facility without a license, the Bureau refers the case to the Office of the Attorney General.

The total number of child care vouchers provided to child care providers depends on the total budget available and the cost of care for each child enrolled. The average number of CCDF vouchers every month is approximately 34,000 (for approximately 18,000 families). The total value of child care vouchers for FFY 2011 is approximately \$165 M. This figure includes \$15 M in ARRA funding that will discontinue in FFY 2012.

The Bureau of Child Care also currently inspects child care providers twice a year. The new requirements contained in the bill would be added to the current inspection criteria. FSSA reports this will result in slightly longer inspections but will not require additional staff. Additionally, any added paperwork for necessary drug tests, staff physicals, and fire drills will be reviewed during annual inspections.

**Explanation of State Revenues: Summary:** This bill will increase state revenue from (1) fees submitted for additional national criminal history background checks, (2) any civil penalties assessed against persons found in violation of day care regulations, (3) civil costs received from any additional civil cases filed against individuals found in violation of day care regulations, (4) fines and court fees collected for any increase in Class B misdemeanors resulting from increased convictions of individuals who knowingly or intentionally violate provisions regulating child care ministries.

#### **Background Information:**

*National Criminal History Background Check:* A national criminal history background check costs a total of \$32.25. Of this amount, \$17.25 is forwarded to the federal government and \$15 is deposited into the state General Fund. FSSA reports the total number of child care provider employees and volunteers is unknown. FSSA also reports child care providers experience high employee turnover, which could substantially increase revenue the General Fund receives from national criminal history background check requests. However, because the number of child care provider employees and volunteers is unknown, state revenue from national criminal history background checks is indeterminable.

*Civil Penalties:* This bill may increase revenue the state receives from civil court costs and civil penalties. Under the bill, the DFR may impose a civil penalty of not more than \$1,000 for a violation of regulations concerning day cares (IC 12-17.2). The bill adds that any civil penalties collected are required to be deposited in the DFR Child Care Fund. For FY 2010, this fund received approximately \$39,600 in total revenue.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase.

A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

*Penalty Provision:* The bill establishes that an individual who knowingly or intentionally violates the provisions that regulate child care ministries (IC 12-17.2-6) commits a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** The bill specifies that any final decision made by the DFR regarding a child care provider's licensure is subject to judicial review. To the extent a final decision made by DFR is challenged and a hearing is scheduled in court, court workload will increase to hear additional cases.

Additionally, the local prosecuting attorney may experience increases in workload to the extent (1) the DFR reports unregistered child care ministries to the local prosecuting attorney for criminal actions or (2) the DFR reports a child care provider's unregistered operation to the local prosecuting attorney for civil action.

*Criminal Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** *Criminal and Civil Court Fee Revenue:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee (or \$100 civil costs fee) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** DFR, State Fire Marshal, ISP, OAG, ISDH, Fire Prevention and Building Safety Commission.

**Local Agencies Affected:** Local prosecuting attorney, trial courts, local law enforcement agencies.

**Information Sources:** Susie Howard, FSSA; Auditor of State; Indiana State Police.

**Fiscal Analyst:** Bill Brumbach, 232-9559.